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PRINCIPLES OF LAW AND JUSTICE IN THE HISTORY OF RUSSIAN LEGISLATION AND WESTERN EUROPEAN STATES

Abstract. The paper deals with the correlation of the principles of law and justice throughout the history of Russian and foreign legislation. In ordinary people's ideas, law and law have always been associated with justice. The effectiveness of any law depends primarily on its fairness. Therefore, positive results in this direction can be achieved only if laws, by-laws, and other sources of law meet the requirements of justice. The author substantiates the thesis that in order to establish the right balance between justice and legality, first of all, it is necessary to take into account their importance as social regulators of the harmonious relationship of the individual with society. The formation and implementation of the principle of legality in the activities of the Russian state and the life of Russian society for many centuries of state and legal development of Russia remained, and still remains, one of the main trends in the activities of the true state power. The process of legal registration of requirements of law in the Russian law has come a long process from the first germ of its fixation in the early stages of legal development, to a sufficiently clear and unambiguous definitions and requirements in the beginning of the XXI century is Considered the Genesis of consolidation of legality and justice in the Russian legislation with the IX — the beginning of XXI century in the legislation of foreign countries. A study of the pattern of manifestations of legal justice suggests three modifications: legal justice according to the custom (as the unwritten law), legal justice for official legitimate law (the formal law) and legal justice, scientific and doctrinal. The author dwells in detail on the theoretical and philosophical characteristics and definitions of law and legal structures, based on the works of S.L. Frank, P.G. Vinogradov, V.S. Solovyov.

Keywords: legality, justice, statehood, legislation, legal doctrine

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SEMIOTIC AND LEGAL ANALYSIS OF THE VISUAL REPRESENTATION OF RUSSIAN NATIONAL FLAGS

The article was prepared within the framework of the scientific project № 18-011-00177 “Legitimation of Law through Discourse: Speech Act as a Form with Normative Content”, supported by the Russian Foundation for Basic Research.

Abstract. The present research was provoked by high necessity in the analysis of the role of historic memory in interpretation of contemporary state symbols and legal regulation of their use in different political, ideological and cultural contexts. The legal regulation of the national flags, including historical ones, cannot be properly done without taking into consideration their symbolic value for different groups of population, sharing different political views and attitudes to the past. Semiotic aspects are also important for judicial and administrative practice, which should be aimed, as well as the legislation in this area, at formation of the common political identity and should not lead to separation instead of unification. Visual representation of flags as symbols, which can transmit variety of meanings is understood differently by different audiences, is also a means to show how contexts may affect self-identification of the nation. The methodological basis for the research comprises works in legal semiotics, hermeneutics and visual communication. This is accounted for the fact that legal regulation of flags as state symbols cannot be investigated without understanding of their interpretation in non-legal discourses, such as vexillology, heraldry, history and political science. Semiotics

unites legal and non-legal discourses and serves as a basis for interdisciplinary research in symbols, their use and interpretation. The authors benefited from the ideas developed in the works by Yu. Lotman, S.A. Knowlton and M. Leone.

The article presents the semiotic analysis of three flags in their historical perspective: the black-yellow-white flag of the Russian Empire, the Soviet red banner and the contemporary white-blue-red national flag of democratic Russia. In the context of multiple connotations caused by demonstration of the imperial flag and of the red flag, the attempts to provide them with the special status in the current Russian legislation have been analyzed. The national white-blue-red flag may also be used as an official symbol of the nation and as unofficial symbol of different political movements. The evolution of its visual representation with time is explored. Having been placed into semiotic discourse, visual representation of national flags shows that image of an official flag may receive its own meaning for the audience or different types of audiences, and that, as Steven A. Knowlton put it, "symbols may have meanings beyond just representing the signified, which are often assigned by an official body". The thesis of overlapping, intertwined and sometimes confused meanings of flags as state symbols, which Massimo Leone put forward, should be borne in mind when it comes to legal regulation of the use of flags, responsibility for their desecration or misuse. Judicial practice should take into account the meaning of the signified, or a message, conveyed by the user of flags and the aim of the legal rule. Without attention to specific nature of the symbols the law implementing practice will be apt to mistakes and inadequate interpretation. Contemporary legal regulation of the use of the national flag includes provisions of the Constitution, administrative and criminal law. Their application in practice confronts with the lack of legal certainty, which makes the interpretation of these provisions even more complicated.

Keywords: state symbols, Russian national flag, semiotics of national flags, legal regulation of state symbols, visual semiotics, visual representation, legitimation of symbols through discourse

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FROM CITIZENSHIP OF RUSSIA TO THE NATIONALITY OF THE USSR

Abstract. The paper, devoted to the institutions of citizenship in Russia and citizenship in the USSR, presents issues related to the trends of international migration policy over a long historical period. Despite the inevitable fluctuations, with the beginning of the reforms of Peter I, the policy of citizenship in Russia becomes part of the state policy in the field of modernization and strengthening of Russia's defense capability. In the long term, the policy of citizenship in Imperial Russia up to the February revolution can be defined as keeping the population out of Russian citizenship and attracting foreigners in certain periods. Episodic were the measures aimed at returning former subjects to Russia. This approach corresponded to the populationist concept of population, which is explained by the constant expansion of the territory of Russia. The liberal law of 1864, which defined the position of foreigners in Russia, contributed to the influx of foreign investment in the late nineteenth and early twentieth centuries. The consequences of the law of 1864 were reflected in the strengthening of land and national contradictions. The state's policy on emigration of Jews from Russia, which became widespread at the beginning of the XX century, also contributed to the growth of tension. the policy on citizenship and international migration changed fundamentally after October 1917 as a result of the ban on renouncing the citizenship of the RSFSR and the return to the USSR of the main part of the "white emigration". At the same time, accelerated industrialization determined the need to attract people to the USSR in the late 1920s and 1930s. foreign specialists, and the international political situation — the influx of political emigrants to the USSR. On the agenda in the 1930s, judging by the legislation, the issues of deprivation of Soviet citizenship were relevant. After world war II, citizenship issues were similar to those that were the focus of attention after world war I and the civil war. It was about large-scale repatriation of Soviet prisoners of war and displaced persons who found themselves outside the USSR, population movements (options) as a result of the revision of state borders, and the return of prisoners of war who were on the territory of the

USSR. The "warming" of international relations in the 1950s and 1970s objectively meant the expansion of the USSR's international relations. A number of laws passed in the 1970s and 1980s actually extended the isolation of the USSR, although these laws failed to stop the growing emigration potential of Soviet Jews, as well as of a number of other nationalities. It is also characteristic that in these years the laws regulating the situation of foreigners and stateless persons in the USSR were adopted in conditions when the statistics of these categories of the population were not available for analysis. Against the backdrop of strong experience in the development and application of legislation governing relations between the state and the population in the area of acquisition and renunciation of citizenship in the form of an unbroken chain of laws, regulations, comments to the laws on citizenship and international migration in many countries around the world fear, the uniqueness of Russia is the existence of two approaches — pre-revolutionary and Soviet. This experience should not be underestimated when choosing a citizenship policy in the future.

Keywords: citizenship, citizenship, migration, international relations, Russian Empire, Soviet Union.

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LEGAL INSTITUTIONS AND NORMS: THE PROBLEM OF VALIDITY AND EFFICACY OF THE LAW IN LEGAL INSTITUTIONALISM

The article was prepared within the framework of the scientific project № 18-011-01195 “Validity and efficacy of law: theoretical models and strategies of judicial argumentation”, supported by the Russian Foundation for Basic Research.

Annotation. The concept of "institutionalism" in the usual word use covers a whole range of influential philosophical and legal doctrines of the XX century. Due to fundamental differences between them, the general theoretical and legal reconstruction of institutionalism as a single doctrine and, consequently, the clarification of its content cause difficulties. At the same time, the popularity of this trend is growing in the discussions of contemporary legal scholars, and some of the representatives of the Russian philosophical and legal thought believe themselves to be the followers of this tradition.

The paper proposes to proceed from the established division of institutionalism into "old" ("classical") and "new". Representatives of classical institutionalism (M. Hauriou, S. Romano) predictably believed that the basis for the validity of norms was institution, but the source of the validity of

institutions themselves as legal phenomena was understood by them differently. For M. Hauriou, this was the "idea" which, from within, structured the institution and organized its activities. Among other things, it also determined the fair balance of power and individual autonomy for a particular institution, which, in the end, predetermined the legal character of this or that institution. S. Romano, adhering to more positivist positions, believed that the reality of so-called "original" institutions (whose reality is not justified by other institutions) is a consequence of their effective organisation, which distinguishes the institution from any other social group.

An important step in the theoretical understanding of institutionalist ideas in law was Schmitt's teaching about three types of legal thinking: decisionism, normativism, and thinking about law as a specific order and form. The latter was formulated by a German lawyer under the influence of the ideas of institutionalism and, according to his idea, should have included it as one of the subspecies. Despite the fact that Carl Schmitt's affiliation to institutionalism is a subject of discussion, the ultimate basis of the reality of the rule of law postulated by him is quite within the logic of the latter — these are the collective metaphysical notions that exist within a specific order.

The modern version of institutionalism is legally represented by the institutional legal positivism of O. Weinberger and N. MacCormick. The "new" institutionalism is based on the concept of institutional fact, which differs from the facts of the physical world. Institutions themselves are understood as systems of human action based on practical information (legal norms). In contrast to the "old" institutionalists, O. Weinberger and N. MacCormick do not consider norms secondary to institutions — one simply cannot be imagined without the other. The reality of norms is understood in the spirit of H. Kelsen's theory, as based on their origin and having a complex connection with the notion of efficacy.

The historical development of legal institutionalism reflects the evolution of ideas about the relationship between reality and efficacy of law — while classical institutionalism denied any connection between them, "new" institutionalism considers these categories as interrelated, which reflects the normative tendencies of the latter.

Keywords: validity of law, efficacy of law, institutions of law, institutional fact, legal institutionalism, legal positivism, institutional legal positivism, M. Hauriou, S. Romano, C. Schmitt, O. Weinberger, N. MacCormick

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CONSTITUTIONALIZATION AS A DEVELOPMENT TREND FOR INTEGRATIVE ORGANIZATIONS

Abstract. One of the development trends in contemporary international law is its constitutionalization as contrasted to more conventional conceptions about pluralism of international legal order. In general terms constitutionalism in the international law is treated as the very existence of international community and system of international legal order, bindingness for states of international legal order, hierarchy of rules of international law and existence of dispute resolution methods regulated by law. However, not all of these features can be attributed to general international law. With a certain degree of conventionality, if guided by Article 38 of the Statute of the UN International Court, one may say about hierarchy of the rules of international law, however, the engagement in international treaties is a sovereign right of states while a judicial dispute resolution is of no binding nature and depends on the will of the parties concerned.

More vividly a constitutionalization trend manifests itself within the scope of supranational integrative organizations. In the international legal doctrine the concept of constitutionalization of legal orders of integrative organizations is traditionally illustrated on the example of the European Union where the availability of such features of constitutionalism as supremacy and direct effect of EU law, codification of basic human rights, system of judicial review of acts of EU institutes is declared. It is generally recognized that Court of Justice of the European Union plays a key role in the process of constitutionalization of EU law.

Similar trends are emerging in the Eurasian Economic Union (EEU). The EEU treaty stipulates its institutional structure and a system of sources of law that is of hierarchical nature. The most essential instrument of constitutionalization of legal order of EEU is EEU Court — a standing body of the Union in charge of resolving disputes arisen in the application of EEU law. At this, EEU Court is charged with a responsibility to verify, primarily, the compliance of international treaties within the scope of the Union, acts of Member States, resolutions, acts and omissions of EEU institutes to the Treaty on EEU. In its practice EEU Court

has consistently asserted the direct effect, direct application and priority of the Union law. One may say about the ensuing process of formation of general principles of EEU law, in particular, the principle of proportionality and the demand to guarantee, within the scope of the Union, the protection of human rights and freedoms at the level now lower that it is being implemented in Member States, has been included into the resolutions of the Court.

Keywords: international law, constitutionalization, integrative organizations, European Union, Eurasian Economic Union, Court of Justice of the European Union, Court of Eurasian Economic Union, law of Eurasian Economic Union

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THE LEGAL CAPACITY OF NATURAL PERSONS (CITIZENS)-SUBJECTS OF PROPERTY RELATIONS IN RUSSIAN LEGISLATION

Abstract. The paper deals with the question of how the doctrine of individuals- subjects of property relations was formed and how such a concept as legal capacity was fixed in the laws. The dependence of the legal capacity of individuals in Russian pre-revolutionary civil law on class affiliation, religion, nationality, and place of residence is shown. The concept of legal capacity, the moment of its origin and termination, and the history of civil registration are considered. The article analyzes the regulation of the content of legal capacity in Russian legislation.

Keywords: history of civil law, legal capacity of subjects of citizens (individuals), property relations

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